

#18 DA CA

PTO/SB/64 (10-01)  
Approved for use through 10/31/2002. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**IN THE ALTERNATIVE: PETITION FOR REVIVAL OF AN APPLICATION FOR  
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
**449122031700**

**RECEIVED**

First named inventor: Umesh Bhavsar et al.

Application No: ~~10/168,298~~ 09/581046 Art Unit: 2462

APR 20 2004

Filed: June 8, 2000

Examiner: B. Jaroenchonwanit

**OFFICE OF PETITIONS**

Title: SWITCHED CONNECTION SYSTEM WITH ACCESS TO ITS OWN RESOURCES VIA  
THE INTERNET

Attention: Office of Petitions  
Box DAC  
Commissioner for Patents  
Washington, DC 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action  
by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date  
of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed  
before June 8, 1995, and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☐ Small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.

☒ Other than small entity – fee \$ 1,330.00 (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form  
of Response to Office Action (identify the type of reply):

☐ has been filed previously on \_\_\_\_\_

☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

☐ has been paid previously on \_\_\_\_\_

☐ is enclosed herewith.

Adjustment date: 04/16/2004-WABDELRI  
04/15/2004-WABDELRI 00000024 031952 -09581046  
01 FC:1453 1330.00 CR

04/15/2004-WABDELRI 00000024 031952 09581046

01-FC:1453 1330.00 BA

04/16/2004-WABDELRI 00000063 031952 10168294  
01 FC:1453 1330.00 DA

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

April 12, 2004

Date

Signature

Telephone  
Number:

(703) 760-7762

Kevin R. Spivak - 43,148

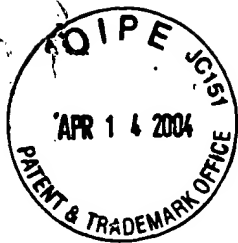
Typed or printed name

MORRISON & FOERSTER LLP  
1650 Tysons Blvd, Suite 300  
McLean, Virginia 22102

Address

Enclosures:

- ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Copy of Decision Vacating Previous Decision



RECEIVED

APR 20 2004

OFFICE OF PETITIONS

Docket No.: 449122031700  
(PATENT)

#18

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Umesh Bhavsar

Application No.: 09/581,046

Art Unit: 2143

Filed: June 8, 2000

Examiner: B. Jaroenchonwanit

For: SWITCHED CONNECTION SYSTEM WITH  
ACCESS TO ITS OWN RESOURCES VIA THE  
INTERNET

**REPLY TO DECISION VACATING PREVIOUS DECISION ON PETITION UNDER 37  
CFR 1.181 TO WITHDRAW HOLDING OF ABANDONMENT AND PETITION TO  
REVIVE IN THE ALTERNATIVE**

MS Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

This is in response to the Decision dated February 12, 2004. Applicant's Petition to Withdraw the Holding of Abandonment, filed on December 23, 2003, was originally granted on January 13, 2004. The Decision was vacated per the Decision mailed February 12, 2004 because no response was filed with the RCE. Applicant's respectfully disagree and submit a copy of the amendment filed on November 10, 2003, along with a copy of the RCE which shows boxes 1(b) and 1(b)(i) checked as including ("x") an Amendment/Reply. The fact that Applicant's petition does not explicitly refer to such amendment is merely an oversight in wording. That said, Applicant's note that the header information supplied on the amendment (highlighted in yellow) filed with RCE on November 10, 2003 was incorrect. The correct header information is provided above.

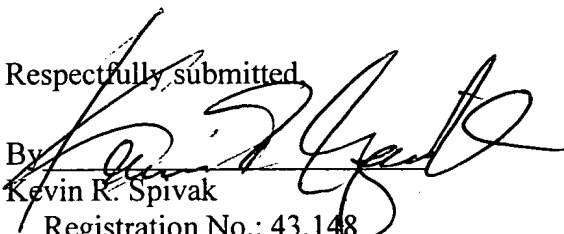
Additionally, the Decision states that the "papers filed [in the Notice of Abandonment] were not responsive to the Office Action and therefore the application was properly abandoned." However, the Office Action dated May 9, 2003 specifically requires a substitute specification in response thereto (see page 2, paragraph 2 of the Office Action). Hence, Applicant's indeed responded to the outstanding Office Action. The fact that Applicant's failed to respond to the rejections under 35 USC 102 and 103 is at best an oversight on the part of the undersigned. In any event, a *bona fide* attempt was made to respond to the Office Action. Hence, a proper amendment was filed with the RCE on November 10, 2003 and the amendment should be treated under 35 USC 1.111 in accordance with the Notice of January 20, 2004. Reconsideration and allowance of the pending claims, as amended, in light of the remarks presented herein are respectfully requested.

In the event this Petition is not granted, Applicant's respectfully Petition to Revive this application, per the attached Petition to Revive.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 449122031700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

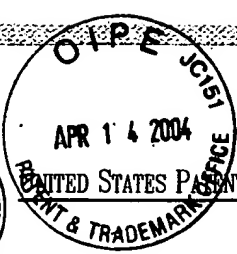
Dated: April 12, 2004

Respectfully submitted,

By   
Kevin R. Spivak

Registration No.: 43,148

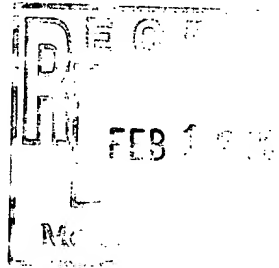
MORRISON & FOERSTER LLP  
1650 Tysons Blvd, Suite 300  
McLean, Virginia 22102  
(703) 760-7700 - Telephone  
(703) 760-7777 - Facsimile



UNITED STATES PATENT AND TRADEMARK OFFICE

449,2-20317.00

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov



Paper No. 17

Kevin R. Spivak  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1888

FEB 12 2004

In re Application of: Umesh Bhavsar )  
Application No.: 09/581,046 ) **DECISION VACATING PREVIOUS**  
Filed: June 8, 2000 ) **DECISION ON PETITION UNDER**  
For: SWITCHED CONNECTION ) **37 C.F.R. § 1.181 TO WITHDRAW**  
SYSTEM WITH ACCESS TO ITS ) **HOLDING OF ABANDONMENT-**  
OWN RESOURCES VIA THE )  
INTERNET )

This is a decision on the petition filed December 22, 2003 under 37 CFR § 1.181 to a withdraw the holding of abandonment of the above-identified application.

On January 13, 2004 a decision granting the petition and withdrawing the holding of abandonment was issued. *A review of the facts in the case reveals that the decision was in error.*

The original decision mailed January 13, 2004 is **VACATED**. The petition to withdraw the holding of abandonment is **DISMISSED**. The application has been restored to abandoned status.

#### RECENT CASE HISTORY

- May 9, 2003 - Non-Final Rejection (Paper No. 9) mailed. Six (6) month statutory period for timely response commences.
- November 10, 2003 - Request for Continuing Examination (RCE) filed with petition for extension of time, fee transmittal and a substitute specification.
- December 3, 2003 - Notice of abandonment mailed. The notice indicates that as prosecution is not closed the RCE is improper and is treated as a submission in response to the Office action. However, since there was no response to the Office action included
- December 22, 2003 - Petition to withdraw abandonment filed
- January 13, 2004 - Decision granting petition mailed.

### DECISION

In support of the petition, Petitioner provided a copy of (1) a substitute specification which included a marked up version of the claims as amended in the preliminary amendment of June 8, 2002; (2) an RCE transmittal including authorization to charge RCE and extension of time fees to Deposit Account No. 03-1952, (3) a petition for extension of time, (4) a fee transmittal sheet, and (5) a post card with a PTO stamp indicating receipt at the USPTO on November 10, 2003 of a submission in this application.

The post card has a typed listing of "Papers enclosed" corresponding to items 1-4 of the preceding paragraph. In addition, the copy of the post card presented with this petition has a handwritten notation of an "Amendment" as a fifth paper enclosed.

*The submission enclosed with the petition does not contain an amendment.* The reference to an Amendment in the previous decision was error on the part of the undersigned who mistakenly believed the marked up version of the claims presented in the preliminary amendment of June 8, 2000 to be a new claim amendment. Furthermore, there was no response to any of the art based rejections of the May 9, 2003 Office action.

Applicant's petition confirms this conclusion as it makes no mention of the submission of an amendment and no representation that any amendment was filed. It states:

A copy of the RCE Transmittal, fee transmittal, extension of time transmittal, substitute specification, marked-up specifications, and stamped return postcard dated November 10, 2003 is attached hereto evidencing that the response was timely filed on November 10, 2003.

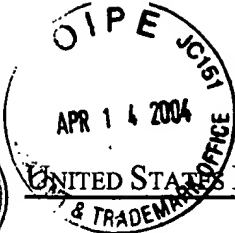
Petitioner has established that a response was filed on November 10, 2003 with the authorization to charge the requisite fee for a three-month extension of time necessary for the response to be considered timely. However, as correctly noted by the Examiner in the Notice of abandonment the papers filed were not responsive to the Office action and therefore the application was properly abandoned.

The petition is **DISMISSED**. If the petitioner desires further review of this Decision, applicant should consider filing a Request for Reconsideration within 2 months of the mailing date of this Decision.

The application file is being forwarded to the Files Repository.



Pinchus M. Laufer  
Special Programs Examiner  
Technology Center 2100  
Computer Architecture, Software, and Information Security  
(703) 306-4160



UNITED STATES PATENT AND TRADEMARK OFFICE

44912-20317.00  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,046	06/08/2000	UMESH BHAVSAR	P00.1068	2462

7590 01/20/2004  
KEVIN R. SPIVAK  
MORRISON & FOERSTER LLP  
2000 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, DC 20006-1888

EXAMINER  
JAROENCHONWANIT, BUNJOB

ART UNIT PAPER NUMBER

2143

DATE MAILED: 01/20/2004

JAN 23 2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETED

### BASIS OF OPINION

The relevant portions of the Statutes and Rules are reproduced below. Emphasis is added to draw attention to the critical phrases.

#### **35 U.S.C. 133 Time for prosecuting application**

Upon failure of the applicant to prosecute the application *within six months* after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

#### **37 C.F.R. § 1.114 Request for continued examination.**

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

- (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
- (2) Abandonment of the application; or
- (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§1.113), a notice of allowance (§1.311), or an action that otherwise closes prosecution in the application.

#### **MPEP 706.07(h) Request for Continued Examination (RCE) Practice**

##### **A. Treatment of Improper RCE**

If one or more conditions for filing an RCE have not been satisfied, applicant will be so notified. Generally, a "Notice of Improper Request for Continued Examination (RCE)," Form PTO-2051, will be mailed to applicant. *An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application.*

If an examiner discovers that an improper RCE has been forwarded to the examiner in error, the application should be immediately returned to a head supervisory legal instruments examiner (HSLIE) within the TC.

##### **1. Prosecution Is Not Closed**

If prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111.





APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (RCE) under 37 CFR 1.114 filed on 11/10/03 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☐ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date on or after June 8, 1995 will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this notice MUST be returned with any reply.***

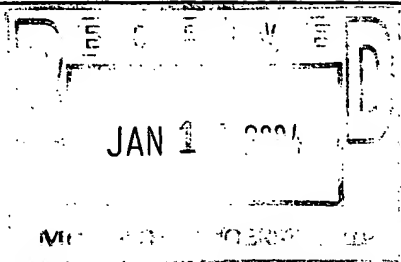
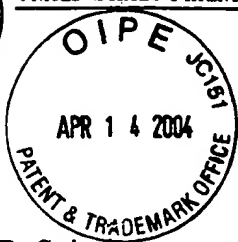
Direct the reply and any questions concerning this notice to:

Theodore Dade, Technology Center 2100

(703) 30 8 - 9464



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS  
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P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
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Paper No. 12

Kevin R. Spivak  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1888

**MAILED**

**JAN 13 2004**

**Technology Center 2100**

In re Application of: Umesh Bhavsar )  
Application No.: 09/581,046 )  
Filed: June 8, 2000 ) **DECISION ON PETITION UNDER 37**  
For: SWITCHED CONNECTION ) **C.F.R. § 1.181 TO WITHDRAW**  
SYSTEM WITH ACCESS TO ITS ) **HOLDING OF ABANDONMENT**  
OWN RESOURCES VIA THE )  
INTERNET )

This is a decision on the petition filed December 22, 2003 under 37 CFR § 1.181 to a withdraw the holding of abandonment of the above-identified application.

This application was held abandoned for failure to file a timely response to the Office action of mail date May 9, 2003. A Notice of Abandonment was mailed on December 3, 2003.

In support of the petition, Petitioner provides a copy of (1) an amendment filed in response to the Office action of mail date May 9, 2003, (2) a substitute specification, (3) an RCE transmittal including authorization to charge RCE and extension of time fees to Deposit Account No. 03-1952, (4) a petition for extension of time, (5) a fee transmittal sheet, and (6) a post card with a PTO stamp indicating receipt at the USPTO on November 10, 2003 of the aforementioned items.

M.P.E.P. § 503 states:

A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

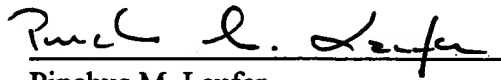
Petitioner has established that a response was filed on November 10, 2003 with the authorization to charge the requisite fee for a three-month extension of time necessary for the response to be considered timely. Thus, Petitioner has established that a response was timely filed and the Abandonment was the result of Office error in not matching the response to the application file. Office records reflect the posting of the fees to the application on November 13, 2003.

The petition is **GRANTED**. The Notice of Abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center support staff for processing of the

**DOCKETED** *ajr*

amendment and RCE. After processing, the application will then be forwarded to the Examiner for appropriate action.



Pinchus M. Laufer  
Special Programs Examiner  
Technology Center 2100  
Computer Architecture, Software, and Information Security  
(703) 306-4160.